

### REMARKS

Reconsideration and the timely allowance of the pending claims, in view of the following remarks, are respectfully requested.

The instant application is under Appeal by virtue of the Notice of Appeal filed on August 15, 2006. An Appeal Brief was filed on October 19, 2006. This Amendment is, therefore, being submitted in accordance with 37 C.F.R. §41.33(b)(1), which expressly allows the cancellation of claims after the filing of an Appeal Brief.

In the Final Office Action of June 20, 2006, the Examiner rejected claim 8, under 35 U.S.C. §112, ¶2, as allegedly being indefinite; rejected claims 1-6 and 8-9, under 35 U.S.C. § 103(a), as allegedly being unpatentable over Tomoyasu '583 (U.S. Patent Application Publication 2004/0185583) as evidenced by Wadsworth (*Handbook of Statistical Methods for Engineers and Scientists*, 1998); rejected claims 1, 4-6, and 8-9, under 35 U.S.C. § 103(a), as allegedly being unpatentable over Natzle '047 (U.S. Patent Application Publication 2004/0097047) as evidenced by Wadsworth; and rejected claims 2-3, under 35 U.S.C. § 103(a) over Natzle '047 (U.S. Patent Application Publication 2004/0097047) in view of Doris '981 (U.S. Patent Application Publication 2004/0241981 A1).

The Examiner also objected to claim 8 as allegedly being an improper dependent claim.

Prior to this Amendment, claims 1-6 and 8-10 were pending, in which claim 10 was withdrawn from consideration. By this Amendment, dependent claim 8 has been cancelled thereby rendering the objection and rejection under §112, ¶2 of claim 8 moot. Applicants submit that the cancellation of claim 8 does not affect the scope of any other pending claim in the instant Appeal and, therefore, is proper under 37 C.F.R. §41.33(b)(1). Applicants, however, expressly reserve the right to pursue protection for the subject matter of claim 8 in a continuation application and Applicants respectfully request the immediate withdrawal of the objection and rejection of claim 8.

As such, claims 1-6 and 9 are submitted for examination of which claims 1 and 9 are the sole independent claims.

Applicants respectfully traverse the prior art rejections of claims 1-6 and 9, under 35 U.S.C. §103(a) for the following reasons.

### I. Prior Art Rejections of Claims 1-6 & 9

Regarding the rejections of claims 1-6 and 9, Applicants rely on the arguments submitted in the Amendment filed on May 10, 2006. Namely, that despite its comprehensive disclosures, there is absolutely nothing in Tomoyasu '583 that teaches or suggests fitting the trim amount data as a function of time with a log relationship of the form  $x = L \ln(t) + L \ln(C/L)$ , as required by independent claims 1 and 9. And, Wadsworth does not cure the deficiencies of Tomoyasu '583 as it is directed to developing the theory behind statistical modeling and merely identifies generic, logarithmic-based statistical relationships. In so doing, Wadsworth does not, in any way whatsoever, teach the specific fitting relationship required by independent claims 1 and 9.

Moreover, with regard to the remaining references, Applicants submit that like Tomoyasu '583, Natzle '047 is completely devoid of teaching or suggesting fitting the trim amount data as a function of time with a log relationship of the form  $x = L \ln(t) + L \ln(C/L)$ , as required by independent claims 1 and 9. And, as discussed above, Wadsworth also fails to teach or suggest the specific fitting relationship required by claims 1 and 9. It is further respectfully submitted that Doris '981 fails to cure the deficiencies of Natzle '047 noted above and that even assuming it would have been obvious to combine the references, which Applicants do not concede, such a combination would not include all the claim limitations and would not present a *prima facie* case of obviousness.

As such independent claims 1 and 9 are clearly patentable over the applied references. And, because claims 2-6 depend from claim 1, claims 2-6 are also patentable at least by virtue of dependency as well as for their additional recitations. Accordingly, the immediate withdrawal of the prior art rejections of claims 1-6 and 9 is respectfully requested.

### II. Conclusion.

All matters having been addressed and in view of the foregoing, Applicants respectfully request the entry of this Amendment, the Examiner's reconsideration of this application, and the immediate allowance of all pending claims.

Applicants submit that the entry of this Amendment is proper under 37 C.F.R. §41.33, as the claim changes: (a) place the application in condition for allowance for the reasons discussed herein; (b) do not require any further consideration as the only claim change is the

cancellation of a dependent claim, which is expressly allowed under §41.33(b)(1); and (c) places the application in better form for the current Appeal, as it cures the outstanding objections and §112, ¶2 rejection issues.

Applicant's Counsel remains ready to assist the Examiner in any way to facilitate and expedite the prosecution of this matter. Should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the Undersigned.

Please charge any fees associated with the submission of this paper to Deposit Account Number 03-3975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

**PILLSBURY WINTHROP  
SHAW PITTMAN LLP**



E. RICO HERNANDEZ  
Reg. No. 47,641  
Tel. No. 703 770.7788  
Fax No. 703 770.7901

Date: December 22, 2006  
P.O. Box 10500  
McLean, VA 22102  
(703) 770-7900